STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

-vs-

MUHAMMAD ALTANTAWI,

Defendant-Appellant.

Supreme Court
No. 160436

Court of Appeals
No. 346775

Circuit Court
No. 2017-265355-FJ

/

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PLAINTIFF-APPELLEE'S ANSWER IN OPPOSITION TO INTERLOCUTORY APPLICATION FOR LEAVE TO APPEAL

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RESPONSE TO APPELLANT'S JURISDICTIONAL STATEMENT

The People as Plaintiff-Appellee agree that this Honorable Court has jurisdiction to consider Defendant-Appellant Muhammad Altantawi's interlocutory application for leave to appeal following an interlocutory decision by the Court of Appeals. Specifically, this Court has jurisdiction pursuant to MCL 600.215, MCR 7.303(B)(1), and MCR 7.305(C)(2).

COUNTER-STATEMENT OF QUESTIONS PRESENTED

I. **Did the Court of Appeals and the trial court err when they found Defendant was willingly interviewed by the police, per his father's request, at the dining room table of his spacious family home without any restraints for 38 minutes and concluded that he was not in custody because he was not in an inherently coercive environment?**

The People answer, "no."

Defendant answers, "yes."

II. **Did the Court of Appeals and the trial court clearly err when they concluded that Bassel Altantawi had the authority, as the homeowner and only adult present, to consent to a search of the Altantawi family home and its contents and that he voluntarily consented to the search for and removal of the home security system's DVR recording device?**

The People answer, "no."

Defendant answers, "yes."

COUNTER-STATEMENT OF FACTS

Muhammad Altantawi, hereinafter referred to as Defendant, is charged in this case with First-Degree Premeditated Murder, contrary to MCL 750.316(1)(a). He was bound over to the Oakland Circuit Court on December 8, 2017, with his case assigned to the Honorable Martha D. Anderson. Defendant's trial was set for October 8, 2018, but it was adjourned due to the litigation of a defense motion to suppress. An evidentiary hearing, at which Defendant did not testify, was held on September 21 and October 8, 2018, and after the hearing the parties submitted additional pleadings. On November 20, 2018, the court denied the motion to suppress, entered two separate orders (one relating to each issue), and granted Defendant's oral motion to stay the proceedings.

The Court of Appeals subsequently granted Defendant's interlocutory application in a split decision. *People v Altantawi*, unpublished order of the Court of Appeals, entered Mar. 7, 2019 (Docket No. 346775). On interlocutory appeal, the Court of Appeals affirmed the trial court's ruling. *People v Altantawi*, unpublished per curiam opinion of the Court of Appeals, issued Sept. 5, 2019 (Docket No. 346775). Defendant now seeks interlocutory leave to appeal in this Court.

Evidentiary Hearing:

DVR/Consent Issue:

Around 6:40 A.M. on August 21, 2017, Farmington Hills Police Officer Nathan Jordan was dispatched to 36933 Howard Road in response to a woman who was injured after having fallen "10 to 29 feet." (E-I, 7–10)[1] He was flagged down at the driveway by a young woman named Aya, who was the daughter of the injured woman, Nada Huranieh. (E-I, 10–11) Aya led Ofc. Jordan to the patio, onto which Nada appeared to have fallen. (E-I, 11–12, 19, 22–23, 46) There was an open bedroom window directly above Nada and a dent in a decorative stucco ledge just below the

[1] E-I = Evidentiary Hrg., Vol. I, Sept. 21, 2018; E-II = Evidentiary Hrg., Vol. II, Oct. 8, 2018.

window. (E-I, 13–15, 17–19, 21, 35) A rag was lying nearby. (E-I, 13, 18, 21) Nada's son, Defendant, was kneeling next to her. (E-I, 19–20, 46) He appeared to be doing chest compressions with only his left hand while holding a cell phone in his right hand. (E-I, 19, 46–47, 53)

Ofc. Jordan said he would do CPR and asked the children to go to the end of the driveway to flag down the fire department. (E-I, 20) He checked Nada for a pulse and for bleeding, but he found neither; in fact, there was no blood at all. (E-I, 20, 51) She was warm, but appeared dead. (E-I, 21, 51) The officer began CPR, and medics soon arrived to take over. (E-I, 20–21, 23, 49)

Ofc. Jordan then went inside and spoke to Defendant and Aya. (E-I, 24) He asked them when they last saw Nada, and Defendant said he saw her at 8:00 P.M. the previous night. (E-I, 24) He went to bed about 11:00 P.M. (E-I, 24) Aya said she woke at 6:30 A.M. and did not see her mother, so she called her. (E-I, 24, 53) She checked the master bedroom, then searched the house. (E-I, 24) She noticed a light on in the west bedroom on the second floor, so she went in, looked out the window, and saw her mother on the patio. (E-I, 24) She called Defendant, and they both went outside as one of them called 911. (E-I, 25) Defendant told Ofc. Jordan that he, his mother, and his sisters, Aya and Sidra, were the only ones there. (E-I, 25) Ofc. Jordan later learned that Sidra, who had some developmental disabilities, was asleep upstairs. (E-I, 25–26) He also asked both children if Nada had any history of depression or suicide attempts. (E-I, 26) Aya said she did not, but Defendant said he had seen his mother take pills in the past. (E-I, 26)

Ofc. Jordan next spoke to the fire personnel. (E-I, 26, 31) He also called for a supervisor because "[t]hings didn't seem right" based on his experience, such as the placement of Nada's body. (E-I, 8, 27–28, 50, 60) He could not understand how she landed face-up and with her head toward the house if she came out the window. (E-I, 29, 31) It was also unusual that the children had found her, and it could be a suicide. (E-I, 29) He then went back inside and spoke to the

children again to learn more about Nada's usual morning habits. (E-I, 32) Aya said her mother usually woke up at 4:30 or 5:00 A.M. each morning to clean before taking them to school at 6:30. (E-I, 32) Defendant said he woke up at 6:30 that morning and realized they were late. (E-I, 32) He had previously said he woke up at 6:00 and heard Nada. (E-I, 32) Neither of them saw her that morning. (E-I, 33) Ofc. Jordan had someone stay with the children because one of the firefighters asked for an escort through the large house and up one of stairways to the bedroom so he could assess how Nada had landed and the type of injuries she might have. (E-I, 33–34, 63, 68)

The bedroom appeared to be a guest room with a window about 3 to 3 ½ feet off the ground. (E-I, 34–35) There was a step ladder beneath the window, and a bottle of Tilex was sitting on top of it. (E-I, 35) The windowpane on the right side, which swung outward, was open, and there appeared to be spray marks on the outside. (E-I, 35) When Ofc. Jordan looked outside and down, the dent in the stucco ledge was more noticeable than it was from below. (E-I, 35–36) Both he and the firefighter tried to determine how Nada went out the window, struck the ledge, and landed like she did, but they could not come up with a scenario. (E-I, 36–37, 46)

Back downstairs, Ofc. Jordan asked Defendant and Aya if they had moved Nada's body, but they said no. (E-I, 37) He asked if they had any nearby family members, and they said their father lived relatively close. (E-I, 38) Their parents were divorcing. (E-I, 38) Ofc. Jordan had Defendant call his father, Bassel, and Ofc. Jordan spoke to Bassel. (E-I, 38, 55, 69) He explained the situation and said Bassel needed to come, but Bassel expressed some reservations because he was barred by a court order and tether from being there. (E-I, 39, 56–57, 139) Eventually, he agreed to come to the house at Ofc. Jordan's request. (E-I, 39)

Detective Ryan Molloy arrived at the home before 8:00 A.M. (E-I, 74–76, 124, 129) The house was "very big," at least 8,000 square feet. (E-I, 113) He saw Nada's sheet-covered body

lying on the patio. (E-I, 76) She had been pronounced dead, and the medics were leaving. (E-I, 76–77) The window from which she was believed to have fallen was open and had no screen, and Det. Molloy saw an indentation in a ledge just below it. (E-I, 77) The lack of blood alarmed him, because he assumed that falling out a window would result in some sort of injuries. (E-I, 84–86)

Bassel soon arrived. (E-I, 41) He said again that he was on probation and was not supposed to be there, but Det. Molloy told him he would handle it. (E-I, 79, 139–140, 153) Bassel had not been at the house in over a year. (E-I, 83) When Det. Molloy told him that Nada was dead, he "appeared distraught." (E-I, 41, 78, 151) Det. Molloy explained that her death was not "natural," and he asked Bassel if they could investigate. (E-I, 84) Bassel said he did not have a problem with that. (E-I, 84, 131) He was then escorted inside to see the children. (E-I, 41)

Sergeant Richard Wehby also responded to the scene. (E-I, 175–178, 207) Bassel was in the garage with some of the other officers when he arrived. (E-I, 179–180) The sergeant spoke privately to one of the officers about the situation. (E-I, 179–180) He learned that although Bassel was on a tether and was not supposed to be there, he was the homeowner and was called to come care for the children because they had no relatives in the country. (E-I, 180–181) He then went to the patio. (E-I, 181–182) The placement of Nada's body seemed "different" than what he would have expected if she had fallen. (E-I, 183–184, 216) He also noticed there was no blood on the ground even though her head was lying on the concrete. (E-I, 185)

Det. Molloy and Sgt. Wehby then went upstairs. (E-I, 86, 132, 189–190) There were several bedrooms, each with attached bathrooms. (E-I, 113, 192) In the guest room, they saw the ladder and Tilex bottle, which was suspicious; Det. Molloy had "cleaned a lot of windows" and "never used Tilex." (E-I, 86–87, 189–190) Both men thought the ladder's positioning and the Tilex bottle being upright were suspicious if Nada was supposed to have slipped off the ladder. (E-I, 87–

90, 189–190) There were no signs of a struggle. (E-I, 127, 212) There was a lot of makeup in the bathroom, which Sgt. Wehby later learned was Nada's makeup room. (E-I, 212, 227–228) Looking outside, he saw what appeared to be black hairs near the indentation in the ledge. (E-I, 191)

Walking through the rest of the "[v]ery big house," Sgt. Wehby found a workout room, a sauna, and the laundry room. (E-I, 192–193) The front-loading washer was flashing an error code. (E-I, 193) Inside, there was built-up water and what appeared to be a bathmat. (E-I, 193) Some jeans and a pair of boy's underwear were in the dryer. (E-I, 193–194, 219)

Later, Ofc. Jordan, Det. Molloy, and Sgt. Haro walked around the house to look for signs of forced entry, but they found none. (E-I, 39–40, 49–50, 65, 78, 87) They discussed how Nada could have fallen, and they agreed her body's placement and the "whole situation" were "odd." (E-I, 70, 78, 129–130, 154) They noticed cameras around the exterior of the house, one of which pointed at the patio. (E-I, 40, 50–51, 62, 65, 78, 135, 187) Ofc. Jordan later asked Defendant about the cameras, and he said they did not work. (E-I, 40–41, 62, 216) Det. Molloy also asked Defendant about the cameras, but Defendant said he did not want to talk right then. (E-I, 92, 133–134) The detective also asked Bassel about the cameras, but he said he did not think they worked. (E-I, 92)

Det. Molloy eventually asked Ofc. Jordan to call the medical examiner's office, and when the examiners arrived they took more photos in addition to those already taken by Officer Stacy Swanderski, a police evidence technician,. (E-I, 41–42, 91, 181, 198–200) Bassel had asked Det. Molloy not to let the children see Nada's body, and he complied. (E-I, 91–92) Bassel and the children left a short time later, but not before Det. Molloy told Bassel that the investigation would be ongoing and that he would be in touch. (E-I, 92–93, 136) The detective left around noon to begin writing reports. (E-I, 92–93, 125–126) The family returned after a while, and Bassel was allowed to see Nada's body while the children stayed in the car. (E-I, 196–197, 214)

Back at the station, Det. Molloy learned of a call from the tether company about Bassel. (E-I, 93, 140) After calling Bassel's probation agent for his tether information, he learned the tether showed Bassel had not otherwise entered the area near the house. (E-I, 93–94) Det. Molloy and Sgt. Wehby received several more calls from members of the community and Nada's friends, either seeking information or urging them to keep investigating. (E-I, 94, 138, 201–202)

Det. Molloy came into work around 7:00 A.M. the next day, August 22, and he received a call from a woman claiming to be the Altantawi family's interior decorator. (E-I, 96, 138) She had spoken with the company that installed the cameras and assured him they were working unless the system was unplugged. (E-I, 96, 135, 170) Det. Molloy advised Sgt. Wehby that there might be video of the incident, which he wanted to get if it existed because it might explain what happened. (E-I, 97, 141–142, 159–160, 209, 211, 217–218) He and Det. Jason Hammond already planned to go out to the house, so he called Bassel to ask if he was there and if they could come by. (E-I, 97) Bassel said, "Sure, come on over." (E-I, 97, 102)

Dets. Molloy and Hammond were in plain clothes and driving an unmarked car when they arrived at the house. (E-I, 97, 102) Their weapons were covered, and they did not expose or brandish them. (E-I, 98, 102) They knocked, Bassel answered the door, and Det. Molloy said he had learned the cameras may have been working the previous day. (E-I, 102) He explained they wanted to at least take a look at the system. (E-I, 102) Bassel said, "Sure, go ahead," but he did not know where it was located and again said he did not think it worked. (E-I, 103) He led them to an area of the basement where he thought the system's DVR recorder might be, but it was not there. (E-I, 103) Det. Molloy had seen a closet upstairs with some older electronic equipment in it, and he mentioned it to Bassel. (E-I, 104, 133) Bassel said, "Okay, you can go check that out" and led them to it. (E-I, 104) The DVR was not there, though, either. (E-I, 105)

Det. Molloy then called the interior decorator, and she gave him the phone number of the company that installed the system, Tellus. (E-I, 105, 143–144) Someone from Tellus said the DVR was in a furnace room off the nearby second-floor workout room. (E-I, 105–106) Det. Molloy told Bassel, who had been standing there the whole time, what he had learned. (E-I, 106) The detective opened the door to the furnace room and found a DVR on a small table tucked away behind the furnace. (E-I, 106, 133) The man on the phone said he needed to unplug the device to keep it from writing over itself. (E-I, 107)

Det. Molloy hung up his phone, explained to Bassel that the recorder was probably working if its lights were on, and said they would like to take it. (E-I, 107, 163) Bassel said, "I don't know," so they kept talking. (E-I, 145–146) The detective mentioned the phone calls he had received, and Bassel seemed upset at the idea of there being gossip. (E-I, 163–165) Eventually, Bassel said, "Fine" and "I don't think I have a problem with" the detectives taking the DVR. (E-I, 107–108, 146, 150, 158) His tone was "[f]riendly," and he had been "cooperative with the entire investigation." (E-I, 108, 145, 157) The detectives never raised their voices. (E-I, 162) Bassel allowed them to take the DVR and never objected to them doing so. (E-I, 106, 110) Det. Molloy did not touch the DVR until Bassel said he could take it. (E-I, 145, 162) He asked Bassel if he knew the system password, but he did not. (E-I, 110) He said he would return it as soon as they no longer needed it. (E-I, 111) Det. Molloy recorded the conversation on his phone after he hung up with Tellus because they were getting Bassel's consent—which he gave them—to take something from his house. (E-I, 107–108, 142, 148, 166) It was standard procedure to use such a recording for consent when someone was not a suspect and was cooperative. (E-I, 204–206)

As they exited the room, Det. Molloy asked Bassel if Defendant was there, to check in on him and see how he was doing. (E-I, 111) Bassel said, "Yeah, he's right here in his room" and "it

was okay" to speak to him. (E-I, 111) Det. Molloy asked Defendant how he was and then asked him about the camera system. (E-I, 111) Defendant knew how it worked and said he thought Nada accessed it using one of her old phones, but he did not think the information would be on her new phone. (E-I, 111–112) He also asked Det. Molloy if he knew if there were any cameras inside, and the detective said he only knew about the ones he had seen. (E-I, 112)

Det. Molloy also asked Defendant to go through the previous day again, and Defendant said he got up at 6:00 A.M. and showered. (E-I, 112–113) Aya then told him Nada had fallen, and she called 911. (E-I, 113) They went out through the garage, ran to the patio, and saw Nada lying there. (E-I, 114) At some point, he and Aya switched phones, and he spoke to 911 and did CPR. (E-I, 114) Defendant and Det. Molloy also spoke about the atmosphere in the home, including the "contentious" divorce. (E-I, 114) Defendant said he got along with Bassel much better, and he noted he had met Bassel for dinner and prayer several nights earlier. (E-I, 114–115) He and Nada argued a lot, but lately their relationship was better. (E-I, 115) He said, though, he was not surprised she fell out the window because she had had "several car accidents in one week several months ago," which seemed like an odd statement. (E-I, 115–116)

The detectives took the DVR back to the station and plugged it into a monitor. (E-I, 116) They tried different standard passwords for DVR systems, and one of them—the digits 1 through 7—worked. (E-I, 116–117) A video taken around 5:55 A.M. the previous morning by the camera above the patio did not directly record the guest-bedroom window. (E-I, 117–118, 121; E-II, 54) However, a light from the room cast moving shadows on the ground below, and Nada's body appeared after it came out the window and hit the patio. (E-I, 117, 120, 150; E-II, 54) Something then passed in front of the window, and when the video was slowed the new shadow appeared to be from a ladder. (E-I, 120–121) A moving shadow then disappeared, and the light went off. (E-I,

120; E-II, 54–55) The officers concluded after several viewings that there was "obviously" another person—who, from the shadows, appeared to be a male—in the room who "flipped" Nada's body out the window. (E-I, 121–122; E-II, 12, 56, 104)

Miranda *Custody Issue:*

After viewing the video, the officers wanted to talk to the children again in the hope they could determine who had been in the room with Nada. (E-I, 122, 298–300, 337; E-II, 57) They knew "[t]here was a potential that [Defendant] was" a suspect. (E-I, 336; E-II, 21) Sgt. Wehby and the two detectives returned to the house after 3:00 P.M., about 2 hours after the detectives were last there. (E-I, 302; E-II, 8, 103–104) Sgt. Wehby had other officers on the way because he did not want the media on the property and a search warrant was being sought. (E-II, 9, 58–59, 105, 109, 131–132, 139–140) Officer James Bretz soon arrived and parked his marked car in a driveway across the street from the 350-foot driveway to 36933 Howard. (E-II, 59–62, 105–107, 162–163) Sgt. Wehby had told him "to be in the area but not visible." (E-II, 164, 172) Ofc. Swanderski, who had the same instructions, also arrived. (E-II, 166, 173, 183–186, 191–192)

Bassel answered the door when the detectives knocked, and they told him they wanted to talk to the children more about the timeline and asked who was there. (E-I, 300–301; E-II, 9, 17, 42, 49, 65) Defendant and Sidra were there, but Aya was at school. (E-I, 301; E-II, 66–67) The detectives did not mention the video. (E-II, 17) They asked if Bassel would bring the children to the station, but he did not want to frighten them and preferred that they talk at the house. (E-I, 300, 302–303; E-II, 9–10, 17–18, 58, 65–66, 113) He said it was fine for them to talk there and was "cooperative" and "welcoming," so they agreed to his request. (E-I, 302–303; E-II, 42, 47)

Sgt. Wehby followed Bassel upstairs and got Defendant while Bassel went looking for Sidra. (E-I, 346–347; E-II, 67–72, 121) Bassel said that he had to go pick Aya up from the bus

stop at the library, and Sgt. Wehby offered to have someone pick her up. (E-I, 305–306; E-II, 18, 73, 134) The library was several miles away, and the trip time would vary depending on traffic. (E-II, 20) Bassel declined and said he would go. (E-I, 306, 334; E-II, 73–74, 134) He then asked if he and Defendant could pray, and they did so in the family room while the officers waited nearby. (E-I, 303–305; E-II, 74–75) Afterward, the officers asked Bassel where they could speak to Defendant. (E-I, 305) He said it was "fine" for them to talk to Defendant while he went for Aya and pointed to a large table in the dining area. (E-I, 306–308, 351; E-II, 73, 76)

Bassel left, and both Defendant and Sidra were still there. (E-I, 308, 334; E-II, 50, 72, 75–76, 80) Bassel never told the officers to wait until he returned or that they could not speak to the children at all. (E-II, 18, 40, 50, 76, 101–102) Sgt. Wehby asked two detectives who were outside to follow Bassel to make sure he was really picking up Aya. (E-II, 100–101, 109–112) He advised the officers who were securing the outside that Bassel would be returning, and he never told them to keep him from coming back to the house. (E-II, 118, 132)

Sgt. Wehby sat at the head of the table, with the detectives to his right and Defendant to the left, in his usual spot. (E-I, 309–310, 340–341; E-II, 43, 75, 78) The area behind Defendant was large and open. (E-II, 80) All 3 officers wore plain clothes that concealed their side arms. (E-I, 299, 310; E-II, 45, 62–63, 144–146) The blinds were closed, and no other officers were in the house or otherwise visible during the interview. (E-I, 311–312; E-II, 44–45, 80–81, 93, 108)

The interview lasted 30 to 40 minutes and was recorded, and Sgt. Wehby did most of the talking. (E-I, 312, 314–317, 322–323, 341, 350; E-II, 30) Defendant, who was 16 and attended the International Academy, was not given *Miranda* warnings because he was not under arrest. (E-I, 312–313, 317, 339, 351; E-II, 22, 39, 130) He was not handcuffed or restrained. (E-I, 318, 323; E-II, 82) The tone of the conversation was "regular," with no yelling or threats. (E-I, 313) Defendant

did not appear ill, injured, tired, hungry, or under the influence, and he never said he was hungry, thirsty, that he had to go to the bathroom, or that he needed any medication before or during the interview. (E-I, 313–314; E-II, 38, 83–84) He was not asked for a medical history, but did note he had an ear infection 2 days earlier. (E-I, 339; E-II, 124–125, 146) He was not told he had to stay in his seat, but he also was not told he was free to go or that he could refuse to answer. (E-I, 317, 339; E-II, 22–23, 30, 82, 130) He was not told he had to answer, though. (E-II, 39, 82) He never asked to leave or said he wanted his father. (E-I, 323; E-II, 39) At one point, he got up, went for a bottled water from a package on the counter, and he offered one to Sgt. Wehby. (E-II, 82–83, 129)

The detectives had already noticed some discrepancies in Defendant's statements about when he woke up the previous morning, so they asked him to talk about when he got up, what he did, and how he learned what happened to Nada. (E-I, 313, 319, 352–353; E-II, 86) He said he got up and showered, and after that Aya came and said Nada fell out a window, so he went to check on her. (E-I, 319) The detectives said they thought he knew more than he was saying. (E-I, 319) He was very detailed in some of his answers, but then could not remember other things at all. (E-II, 87) When he talked about Aya, he said he did not want to say anything about her but noted she was awake before him, which was all he had to say about that. (E-II, 147)

The detectives used the word "accident" several times and said that if it was an accident, Defendant needed to tell them. (E-I, 341–342; E-II, 22, 89–90, 123, 126–129) Eventually, he said he did see Nada and that he left his room earlier than he had first said. (E-I, 320, 322) He got up, went downstairs for water, saw Nada with some cleaning supplies, and returned to bed. (E-I, 322; E-II, 87–88) The change in the story made Det. Molloy more suspicious. (E-I, 319–320, 323) However, the officers did not change their tone or become more aggressive, and Det. Molloy thought that "[i]f anything we changed it to be more sympathetic to him." (E-I, 320)

At some point, one of the officers noted that there was a video and asked Defendant if he wanted to say anything about it, but he twice said, "no." (E-II, 24–25, 123, 130) His demeanor changed, and at times he sat "kinda slumped over in his chair" and looked away as he spoke. (E-I, 320–321; E-II, 89, 148) Det. Molloy and Sgt. Wehby said the video showed someone else had been in the bedroom, and Defendant then said he saw Nada and brought some cleaning solution to the room for her at her request. (E-I, 323–324; E-II, 24, 35–36, 88–89) She asked him to hold the ladder, but he "wasn't really paying attention" as he did so. (E-I, 324; E-II, 90) He thought her clothing caught on the window crank and caused her to fall, and he could not grab her. (E-I, 324; E-II, 90–91) He looked out, saw her on the ground, and went back to his room to shower because "he wanted it to be a dream." (E-I, 324–325; E-II, 91) When the detectives asked if he did anything to help, he said he did not because he was "freaking out or he was nervous or scared." (E-I, 325) This scenario was one that Sgt. Wehby had suggested earlier, and Defendant "latched onto it." (E-II, 152–153) He began to get emotional and cry. (E-I, 321; E-II, 24, 91) Det. Molloy told Defendant that his story was "pretty close to what happened but that's not the whole truth and you know it, and . . . this is the time to tell us the whole thing." (E-II, 37) Defendant said he did not want to think or talk about it anymore. (E-II, 37–38)

Sometime during Bassel's absence, Officers Bretz and Swanderski moved their cars to the driveway of 36933 Howard to replace the detectives who had been parked there. (E-II, 166–167, 175, 186, 196) Soon, a car pulled up to the driveway, and they stopped it because they were providing security. (E-II, 167–168, 186, 203) The driver, Bassel, said he wanted to speak to his son in the house. (E-II, 168, 197–198) The officers did not have him exit his car or search him. (E-II, 170, 188) Ofc. Bretz did not know Bassel and contacted Sgt. Wehby to ask if he should be allowed in, and the sergeant told them to come up to the house. (E-II, 168–169, 173, 178–179,

189, 200, 204) Ofc. Bretz told Bassel they would escort him up. (E-II, 169, 179, 189) The officers were not instructed at any time to detain Bassel specifically or keep him from returning, and the entire interaction took no more than 10 minutes. (E-II, 169–170, 179, 188, 191)

When Sgt. Wehby got a call that Bassel was in the driveway, he said, "they're coming in, that's fine, all right," and went to talk to him while Det. Molloy spoke to Defendant. (E-I, 325; E-II, 16, 92, 118–119, 135–136, 171) Det. Molloy maintained a "friendly" tone. (E-I, 325–326) Bassel asked why there were so many police cars there and said he wanted the interview to stop after talking to an attorney. (E-II, 93) He was upset. (E-I, 325, 350; E-II, 14, 101–102) He even handed Sgt. Wehby his phone, and an attorney was on the line. (E-II, 94) Sgt. Wehby rounded the corner with Bassel, relayed Bassel's wishes, and ended the interview. (E-I, 326; E-II, 93, 95) Bassel made a comment that he told them "at the beginning did I need a lawyer," but this was the first time he had said anything about an attorney since the officers arrived. (E-II, 101, 115–117)

Det. Molloy, Det. Hammond, and Sgt. Wehby then spoke to one another, and they all thought Defendant was the person who had thrown Nada out the window (E-I, 327; E-II, 96–97, 150) Sgt. Wehby called for an officer to arrest and transport him. (E-I, 327) However, Defendant was not arrested, handcuffed, or otherwise restrained immediately, and he got up from the table, went to the family room sofa, sat, and "play[ed] on his phone." (E-I, 327–329; E-II, 96) Det. Molloy did later confiscate his phone and told him it was being taken as part of an arrest. (E-I, 331) Bassel wanted to know why this was happening, and Sgt. Wehby told him about the changing stories and the video evidence. (E-II, 97–98) About 15 or 20 minutes later, Officer Andrews responded and took Defendant into custody. (E-I, 318, 329–330; E-II, 97)

Just before 7:00 P.M., the police executed a search warrant. (E-I, 156, 224, 299; E-II, 46, 50–52, 98–99) During a detailed search, they noticed some drag marks on the floor. (E-I, 224)

Defense Proofs (Both Issues):

Bassel Altantawi, the sole defense witness, is Defendant's father. (E-I, 231–232) He lived in Canton on August 21, 2017, and around 7:30 A.M. that day the police called and asked him to come to the house on Howard Road because his wife had been severely injured in an accident. (E-I, 232) He was told to come despite a protective order that barred him from being there. (E-I, 232) He denied speaking to his son earlier that morning and claimed that the first he heard about the accident was when his son called him and put him on with the police. (E-I, 293; E-II, 258–259)

Bassel arrived around 8:00 A.M. and met with Det. Molloy and Sgt. Haro outside, and he was "devastated" to learn of his wife's condition. (E-I, 233–234) There were police inside and outside the house, and he later did not recall giving them permission to be in the house because "[t]hey were already there." (E-I, 235, 257, 261) He took the children out to eat, and they returned before noon. (E-I, 234–236) The police left about 1:00 P.M., and Det. Molloy called later, asked if Bassel had told the children about Nada's death, and said there was only a "small window" to tell them because "people are calling" about her death. (E-I, 236–237, 264–265, 270)

The next day, Det. Molloy called Bassel, asked where he was, and said "okay" and hung up when Bassel said he was "home." (E-I, 237–238, 271) Dets. Molloy and Hammond soon knocked on the door of the house on Howard Road, and when Bassel answered Det. Molloy "barge[d]" inside, said something about cameras, and asked where the DVR was. (E-I, 237–238, 271–273) Bassel had been out of the house for over a year and said he did not know. (E-I, 238–239, 275) The detective then asked more questions about the cameras and the DVR, and Bassel said he did not know anything about the system that was "more than 40 years" old. (E-I, 239)

Det. Molloy then said, "Follow me to the basement." (E-I, 239) The detectives went down a nearby stairway, and Bassel followed. (E-I, 239, 274, 277) Det. Molloy began searching the

4,000-square-foot basement, opened a closet under the stairway where a sound system was located, and said, "It's not there." (E-I, 239, 277–278) Bassel said, "I told you I don't know." (E-I, 239) The detective asked where else it could be, and Bassel said he did not know. (E-I, 239, 278) Det. Molloy kept searching "on his own" and went up to the second floor. (E-I, 240, 278) He opened a closet containing an old DVD/VHS system and said, "Oh, this is an old one." (E-I, 240) He then called the woman who was the family's interior designer and talked to her. (E-I, 240, 279) Bassel just watched and felt like "a stranger" who had "no say." (E-I, 240, 280) Det. Molloy then called a man named Chris Enderman, whom Bassel knew was the person who installed the cameras. (E-I, 240–241) Chris guided the detective to a mechanical closet. (E-I, 240–241, 282)

The DVR was sitting on a small table in the closet. (E-I, 241–242, 282) Bassel thought Chris knew where it was because "it was sitting there for 40 years." (E-I, 242) Det. Molloy was still on the phone, and he went into the closet and unplugged the DVR without saying anything to Bassel. (E-I, 243) He carried it out of the closet, and both detectives said something about "written consent." (E-I, 243–244, 295–296) Det. Hammond took Bassel out to the hallway, and they started arguing about "the consent issue." (E-I, 244, 283) Bassel said "I think I need a written consent," but the detective said, "I don't think it's needed." (E-I, 244–245, 248–249, 283–284) Bassel again said he needed written consent because "I don't want you to get that device." (E-I, 245, 287) He then asked what Det. Molloy was still doing in the room. (E-I, 245)

When Bassel saw Det. Molloy again, the detective came out of the room with the DVR and started talking about people accusing Bassel of being involved in Nada's death. (E-I, 246, 281, 287) Bassel was "very uncomfortable." (E-I, 246–248) He also saw a gun on Det. Molloy's hip at some point. (E-I, 280–281) He did not know he was being recorded, and at some point he said, "No, I don't know" as they went back downstairs. (E-I, 245–246, 284, 286) He later recalled saying

"I guess I don't have any issue with that," but he claimed that he meant "I have no legal issues to keep fighting with you and you're not listening to me." (E-I, 290) Det. Molloy replied, "Appreciate it," and Bassel said, "Appreciate what?" (E-I, 249) The detectives then asked him his name, and he said it before they left with the DVR. (E-I, 249, 287, 291)

Bassel later claimed he could not give consent because he was banned from the house and had no authority to be there. (E-I, 249–250) While he and Nada co-owned the 10,000-square-foot house, he was unsure if the pending divorce affected his ownership. (E-I, 251–252, 262)

Around 3:20 P.M. on August 22, Bassel was still at the house with Defendant and Sidra when "[m]ultiple officers," including Sgt. Wehby, Det. Molloy, Det. Hammond, and two uniformed officers came to the doorstep. (E-II, 207–208) He opened the door, and all 5 officers came barging and charging into the house. (E-II, 208–209, 235, 238) Sgt. Wehby said he wanted to "question [the] kids," and Bassel immediately refused and screamed at them. (E-II, 208, 230, 236–237) The officers were all around him, and they were "throwing a question and comment" and trying to get his consent to investigate, but he said, "no." (E-II, 208) Det. Molloy said something about taking the kids, and Bassel said, "no." (E-II, 208, 230) Bassel said he wanted to get an attorney, but the officers said, "No, we want to talk to the kids." (E-II, 208–210)

Soon, the detectives "zoomed on" Defendant and asked where he was, and Bassel said he did not know but he was probably in his room upstairs. (E-II, 210, 236) The officers kept Bassel from going to check on either Defendant or Sidra, and 3 of them went upstairs to get Defendant while the uniformed officers stayed with him. (E-II, 211–212, 235–236, 238) At the evidentiary hearing, Bassel could not explain why a transcript of the recorded incident showed that Sgt. Wehby told Defendant that they were going to go downstairs and wait for Bassel to come downstairs if, as he claimed, he had never been allowed to go upstairs at all. (E-II, 237–238)

Once the officers returned, they "continued to argue about they want to talk to my son and I tell them that I'm not allowing that." (E-II, 212, 239) Bassel also told them that the family was supposed to go pick up Aya and go eat, but the officers said, "No, nobody is going." (E-II, 212, 239) Eventually, Sgt. Wehby said only Bassel would be allowed to go pick up Aya. (E-II, 239–240) Bassel also could not explain why none of this was in the transcript. (E-II, 240–242)

The officers refused to let Bassel and Defendant go to the basement prayer room and forced them to pray there. (E-II, 213–214, 242–243) Bassel then rushed to the door to go get Aya, and Det. Molloy again asked him to talk to Defendant. (E-II, 214, 254) Bassel said "no," and they argued. (E-II, 214, 254) Finally, he thought they were not going to talk to Defendant, who had an ear infection and was medicated. (E-II, 229–230, 256–257) Bassel was "screaming loud to . . . make it clear to them." (E-II, 229) Sgt. Wehby then said, "No big deal, we were trying to nail down some times but nothing big," so Bassel said "okay" and left. (E-II, 255–256)

Bassel left and rushed to get Aya, and he was "back in about seven, eight minutes." (E-II, 215, 217–218) The driveway was "full of police cars," about 6 or 7 total, when he left. (E-II, 215–216, 243–244) An undercover police car, which he identified as such from watching TV, started following him on Howard Road and went all the way to the library and back. (E-II, 217, 233–234) When he returned to the house, there were 2 Farmington Hills police SUVs blocking his driveway. (E-II, 218) Bassel spoke with a female officer, who knew him and told him that he was not allowed to go back to the house per Sgt. Wehby's orders. (E-II, 218–219) Bassel told her to contact Sgt. Wehby, and he also told her to have them stop talking to Defendant because he realized that they "violate[d] my refusal not to talk" to Defendant and had "basically now hijacked my house and my kids." (E-II, 219–220, 244) The officer said, "Okay, Sir," and returned to her car while he stood, waited, and watched her talk on the radio. (E-II, 220)

About 10 minutes later, Bassel went back to his car, picked up his phone, and began calling attorneys. (E-II, 221–222) He then called a friend who was "very familiar, unfortunately, with [this] kind of situation." (E-II, 222) These calls took 8 to 10 minutes, and he then began arguing with the officer again. (E-II, 222–223) He was angry because he was the owner of the house and wanted to go in. (E-II, 251–252) He again told the officer to contact Sgt. Wehby, and she said, "Okay," and returned to her car. (E-II, 224) Bassel waited several more minutes before returning to his car to check on Aya, who was becoming upset. (E-II, 224) Eventually, the police moved one of their cars and escorted him to the house, per orders from Sgt. Wehby. (E-II, 224–225, 251) It had been about 25 or 30 minutes since he had returned. (E-II, 225, 262)

Bassel did not have a key, so he rang the doorbell for several minutes until Sgt. Wehby opened the door. (E-II, 226, 251–252, 262–263) Bassel put a foot into the house, and he saw Defendant crying while "Molloy [was] all over him and with the gun on his waist." (E-II, 226, 252) Bassel demanded to know what was going on and said, "I told you not to talk to my son," and Det. Molloy shouted at him to "step out." (E-II, 226, 252–253, 257) Sgt. Wehby escorted Bassel outside, and they began arguing. (E-II, 226–228, 252–253) Bassel said that he wanted an attorney present "to protect me and my kids from you guys coercion." (E-II, 228–229)

At the evidentiary hearing, Bassel claimed he had 44 years of education and was a doctor certified in 4 areas of medicine, but his license was suspended in January 2017 after he pled guilty to 4 counts of insurance fraud. (E-I, 252–256; E-II, 234) He wore a tether because he had pleaded to a Domestic Violence charge involving Nada; that case was dismissed in April 2018.[2] (E-II, 244–247) He admitted that the tether records showed he left the the house at 3:27 P.M. and stayed in the library parking lot from 3:34 to 3:39 P.M. (E-II, 247–248) He admitted the records might show

[2] The case was deferred and ultimately dismissed pursuant to MCL 769.4a.

he returned at 3:47 P.M. because he may have spent extra time looking for Aya, but he did not agree there was a big difference between a 7-minute and a 20-minute absence. (E-II, 249–250)

The Court's Ruling:

On November 20, 2018, the trial court issued its ruling. (R, 3)[3] The court stated that it had listened to the testimony and the recordings and reviewed the transcripts and pleadings, and it summarized the "odd situation" of Nada's death that led the police to seek the DVR. (R, 3–4)

The court noted both that the People bore the burden of showing consent by clear and convincing evidence and that, under the totality of the circumstances, it had to be unequivocal, specific, and freely and intelligently given. (R, 4–5) The People did not have to show Bassel knew of the right to refuse, but the court could consider it. (R, 5) The court noted that conduct may be sufficient to constitute consent. (R, 5) It was the court's role to determine questions of credibility. (R, 5) The court noted several factors that it could examine when determining the voluntariness of consent, including age, education, whether the individual was detained and provided *Miranda* rights, whether there were threats or coercion, and the surroundings. (R, 5–6)

The court made specific factual findings that Bassel—a well-educated middle-aged man—was not detained, threatened, or coerced. (R, 6) There was no need to give *Miranda* warnings, and the surroundings did not come into play because he was in his home. (R, 6) The information that led the officers there was lawfully obtained. (R, 6) Both the transcript and the recording showed Bassel was "cooperative," and no one told him he did or did not have to consent. (R, 6) There were 2 officers present, and Bassel let them in when they knocked. (R, 6) They explained that people had called about the unusual circumstances of Nada's death and hoped the cameras might put any questions to rest. (R, 6–7) They asked to look for the DVR, and Bassel said yes, allowed them in,

[3] R = Evidentiary Hearing, Judge's Ruling Transcript, Nov. 20, 2018.

and showed them different places it might be. (R, 7) When they were unsuccessful, they contacted the person who installed the cameras and learned the DVR's location. (R, 7) Bassel was with them the whole time and showed them to that area, and they found the DVR in operation. (R, 7) At some point, one of the officers mentioned a consent form, but Det. Molloy said it was not needed because Bassel was not a suspect. (R, 7) The court noted that Bassel had prior experience with the criminal justice system and "certainly would have been aware of his right not to let the police into his home without a search warrant or once inside to allow them to attempt to find the DVR." (R, 7)

Ultimately, the court found that: 1) Bassel was present with the officers the whole time; 2) he was unrestrained; and 3) he showed the officers where the DVR might be. (R, 7) There was "nothing in the totality of the circumstances that" led the court to believe he was coerced to allow them to take the DVR. (R, 7–8) The court also addressed Defendant's argument that Bassel lacked the authority to consent because he was not supposed to be in the house. (R, 8) The court rejected this reasoning, explaining that even though Bassel did not live in the house he was its legal owner and, thus, was "the only individual that would have had authority to consent to allow the DVR to be taken." (R, 8) Accordingly, the court concluded that under the totality of the circumstances, consent was properly given and denied Defendant's motion. (R, 8)

As to the *Miranda* custody issue, the court noted Defendant alleged that the police should have questioned him in Bassel's presence and given him *Miranda* warnings because he was in custody. (R, 8–9) Thus, the court had to objectively examine the totality of the circumstances to determine if a reasonable person would "find that he was not at liberty to terminate the interrogation and leave," and Defendant's age was a factor the court could consider. (R, 9)

The court noted that after the police reviewed the DVR video, they returned to the house and asked Bassel to bring the children to the station for questioning. (R, 9) Bassel did not want to

traumatize the children, so the police agreed to speak to them there. (R, 9–10) When the police first said they wanted to question them, Bassel asked, "Should I have an attorney here?" (R, 10) The officers said "[i]t's just standard procedure," and they just wanted to get a timeline of events. (R, 10) Defendant and his youngest sister were already there. (R, 10) The other sister was at school, and Bassel said he had to go pick her up, declined an offer to send an officer for her, and chose to go himself, which the officers allowed. (R, 10) Before he left, the officers asked him if they could talk to Defendant in his absence. (R, 10–11) The court noted that although it was not part of the transcript, "if you listen to the audio . . . [Bassel] must – appears to be talking to [Defendant], and asked him if that was okay if they talked to him and the [D]efendant's answer is not completely audible, but it appears that he seems to indicate he doesn't have a problem with that." (R, 11)

The police questioned Defendant at the dining room table of the family home and sat in the chair he normally used when he ate at the table. (R, 11) Sgt. Wehby sat at the head of the table after asking permission to do so, and the two detectives sat across from Defendant. (R, 11) The court noted Defendant was in his own home, which was "a substantially large home by all accounts," and he was not handcuffed or told he could not move. (R, 11–13) The interview lasted less than 40 minutes, which "certainly was not an appreciable length of time." (R, 12) Defendant was not told he was under arrest until after the interview, and "[h]e certainly had no inclination to think that he was under arrest and couldn't move about" during it. (R, 12–13) At one point, he went to get some water and came back. (R, 12–13) He could have gone up to his room, and "[t]here would be nothing that the police could do at that point in time." (R, 13)

The detectives asked Defendant about the day before Nada died and about certain things he had said, and during the interview he changed his story. (R, 11) "[T]he only thing that changed during the interrogation" was when they mentioned the video, which "showed that there was

someone else in the room with his mother, it appeared to be a male and that they knew that there was more to what had happened other than what he was telling them." (R, 12) He became more defensive, and "when he didn't want to talk about something or when he was done talking about something he said so and he stopped." (R, 12) The court noted "he certainly could have stopped talking at any point," and "[he] seemed to indicate that he knew he could." (R, 12)

The court further found that Bassel's "testimony on this witness stand was not credible based upon what [the court] heard on the audio," which included the time periods when he was there. (R, 13) While Bassel "claimed that the police barged in," he actually "let them into his home." (R, 13) There were no raised voices or arguing, he was not threatened or told he had to bring the children to the station, and the police agreed to his request to speak to them at home. (R, 13–14) When they asked if they could talk to Defendant while Bassel was gone, he "asked [Defendant] if that was okay with him and it appears from the audio that [Defendant] said, 'yes,' and that's the way it proceeded." (R, 14) The court also rejected Bassel's testimony that the house was "swarming with police" and noted although that the officers who were outside were not visible from inside. (R, 14) The court found that Bassel's testimony that the police kept him from going upstairs early on "was totally fabricated" based on the transcript and the audio. (R, 14–15) He also "exaggerated the amount of time" he was kept in the driveway by the officers who were providing security, who kept him there for no more than half the time he claimed. (R, 14–15) It also took him longer than he claimed to pick up Aya. (R, 15–16) Once he returned to the house, Sgt. Wehby met him and stopped everything when Bassel said to stop. (R, 16)

The court concluded the factors laid out in a case cited by the defense had not been shown here. (R, 16) The only issue the court had was the fact that Defendant was age 16 at the time of the interrogation, but the court also knew he attended International Academy, "a school for

extremely bright students." (R, 16–17) Based on the audio, it was apparent to the court that Defendant is "a bright young man" who "did understand what was going on." (R, 17) The court did not get the impression that he was afraid not to talk to the police because of his age, and he "understood how much information to give" and only expanded his story if questioned further. (R, 17) When he knew the officers suspected Nada's death was not accidental, he said he did not want to talk about it anymore. (R, 17) The court concluded that "[t]hat does not strike this court as someone who, because of his age, was incapable of putting an end to questioning if he wanted to, of knowing that he didn't have to answer the questions." (R, 17) Accordingly, "[e]ven though [Defendant] was 16," the court did not find a basis to suppress his statements. (R, 17–18)

General Procedural Matters:

The evidentiary hearing began on September 21, 2018, with testimony regarding the consent issue. (E-I, 4–7) It continued and ended on October 8, 2018.[4] (E-I, 354–362; E-II, 3, 6) The court delivered its ruling and entered its orders on November 20, 2018. (R, 3–18)

Defendant filed an interlocutory application for leave to appeal, which the Court of Appeals granted in a split decision. *Altantawi*, unpub order at 1. The Court of Appeals ultimately affirmed the trial court's orders denying both aspects of the motion to suppress. *Altantawi*, unpub op at 1–10. Judge SERVITTO concurred in full as to the consent issue and dissented as to the *Miranda* custody issue. *Altantawi*, unpub op at 1–3 (SERVITTO, J, concurring in part and dissenting in part).

Defendant now seeks further interlocutory leave to appeal before this Court. Additional pertinent facts or procedural history may be discussed in the body of this answer's Argument section to the extent necessary to more fully advise this Honorable Court as to the issues raised.

[4] The court admitted a number of exhibits on both dates. Copies of the non-audio exhibits (except Exhibit #17, an oversized image on poster board) are attached as appendices. The audio exhibits will be submitted on CDs under separate cover.

ARGUMENT

I. **The Court of Appeals and the trial court did not err when they found Defendant was willingly interviewed by the police, per his father's request, at the dining room table of his spacious family home without any restraints for 38 minutes and concluded that he was not in custody because he was not in an inherently coercive environment.**

Standard of Review & Issue Preservation:

Whether a person is "in custody" for *Miranda* purposes is a mixed question of fact and law to be answered independently after de novo review of the record. *People v Mendez*, 225 Mich App 381, 382; 571 NW2d 528 (1997). Factual findings preliminary to the legal determination are reviewed for clear error. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005); MCR 2.613(C). "A finding is clearly erroneous if it leaves this Court with a definite and firm conviction that a mistake was made." *People v Shipley*, 256 Mich App 367, 373; 662 NW2d 856 (2003). The ultimate ruling on a motion to suppress is reviewed de novo. *Williams*, 472 Mich at 313.

This issue was preserved for appellate review by Defendant's motion to suppress.

Discussion:

This Court should deny Defendant's interlocutory application for leave to appeal because there is no need for immediate consideration by this Court. Moreover, in any event, the Court should also deny the interlocutory application because the Court of Appeals correctly affirmed the trial court's order denying the motion to suppress. The trial court correctly concluded Defendant was not in custody when he was willingly interviewed, with his father's permission and without any restraints, at the dining room table of his home for less than 40 minutes. Defendant argues he was improperly isolated from his father and questioned. However, the only testimony that supports his argument came from a witness—his father, Bassel—whom the trial court found was not credible. Defendant presented no other witnesses and did not testify on his own behalf at the evidentiary hearing. Accordingly, this Court should deny the interlocutory application.

A. Defendant has not shown a need for further interlocutory review.

Defendant has not shown that there is any need for further interlocutory appellate review of the issues in his application. An interlocutory appeal, generally, requires a litigant to show that they will suffer some type of harm that a direct appeal following a final disposition of the case *cannot* remedy. *See People v Richmond*, 486 Mich 29, 40 n 9; 782 NW2d 187 (2010) (explaining that, in a pretrial interlocutory appeal by the prosecution, the prosecutor should generally be able to show sufficient harm because direct, post-disposition appellate review could be precluded due to double-jeopardy concerns). Defendant has not set forth any facts that materially distinguish his case from any of the multitude of cases in which one party or another feels aggrieved by a court's pretrial rulings. Even if there was error—and the People agree with the Court of Appeals that there was not in this case—it is not irreversible because Defendant will once again be able to bring these issues before this Court in a post-trial direct appeal.[5] *People v Torres*, 452 Mich 43, 59; 549 NW2d 540 (1996) ("[A] criminal defendant may raise an issue related to an interlocutory decision in its appeal of right from a final decision.") If he is acquitted at trial, then the issues are moot. Accordingly, the Court should deny Defendant's interlocutory application as to both issues raised.

B. The law regarding *Miranda* custody.

In *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966), the Supreme Court held that the Fifth Amendment's prohibition against compelled self-incrimination requires that a person who is in custody must be given a series of warnings before being questioned by the

[5] While the Court of Appeals, in an appeal by right following trial and conviction, would be precluded from ruling differently on the issues it decided already, *Grievance Administrator v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000), this Court would still be free to consider both issues raised in Defendant's current application if they were again presented to the Court on direct appeal following a trial and conviction (and affirmance by the Court of Appeals), so long as this Court denies leave now without expressing an opinion on the merits of the arguments. *Id*.

police.[6] *People v Elliott*, 494 Mich 292, 301; 833 NW2d 284 (2013). "It is well settled that *Miranda* warnings need be given only in situations involving a custodial interrogation." *People v Coomer*, 245 Mich App 206, 219; 627 NW2d 612 (2001). A person is in "custody" only when he or she has been either formally arrested or subjected to a restraint on his or her freedom of movement to the degree associated with formal arrest. *Maryland v Shatzer*, 559 US 98, 112; 130 S Ct 1213; 175 L Ed 2d 1045 (2010), quoting *New York v Quarles*, 467 US 649, 655; 104 S Ct 2626; 81 L Ed 2d 550 (1984); *People v Peerenboom*, 224 Mich App 195, 197; 568 NW2d 153 (1997). The United States Supreme Court has explained that:

> As used in our *Miranda* case law, "custody" is a term of art that specifies circumstances that are thought generally to present a serious danger of coercion. In determining whether a person is in custody in this sense, the initial step is to ascertain whether, in light of the "objective circumstances of the interrogation," a "reasonable person [would] have felt he or she was not at liberty to terminate the interrogation and leave." And in order to determine how a suspect would have "gauge[d]" his "freedom of movement," courts must examine "all of the circumstances surrounding the interrogation." Relevant factors include the location of the questioning, its duration, statements made during the interview, the presence or absence of physical restraints during the questioning, and the release of the interviewee at the end of the questioning. [*Howes v Fields*, 565 US 499, 508–509; 132 S Ct 1181; 182 L Ed 2d 17 (2012) (internal citations omitted, brackets in original).]

See also People v Barritt, 325 Mich App 556, 563–580; 926 NW2d 811 (2018) (analyzing the *Howes* factors). The custody inquiry is objective and does not depend on "the subjective views harbored by either the interrogating officers or the person being questioned." *People v Zahn*, 234 Mich App 438, 449; 594 NW2d 120 (1999).

The Supreme Court, however, has specifically "decline[d] to accord talismanic power" to the freedom-of-movement inquiry, noting that "[n]ot all restraints on freedom of movement

[6] These rights include the right to remain silent, that any statement made can be used against the individual in court, and that they have the right to the presence of an attorney, either retained or appointed. *Miranda*, 384 US at 444.

amount to custody for purposes of *Miranda*." *Howes*, 565 US at 509, quoting *Berkemer v McCarty*, 468 US 420, 437; 104 S Ct 3138; 82 L Ed 2d 317 (1984) (internal quotation marks omitted). "Our cases make clear . . . that the freedom-of-movement test identifies only a necessary and not a sufficient condition for *Miranda* custody." *Howes*, 565 US at 509, quoting *Shatzer*, 559 US at 112. A reviewing court must instead look to "whether the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*." *Howes*, 565 US at 509. Additionally, when the person questioned was a minor and that fact was known to the police or would have been objectively apparent, including the person's age "in the custody analysis is consistent with the objective nature of that test." *JDB v North Carolina*, 564 US 261, 277; 131 S Ct 2394; 180 L Ed 2d 310 (2011). Age, though, may not be "a determinative, or even a significant, factor" in the custody analysis, *id*., and a reviewing court still must ultimately consider whether a reasonable *person*, not a reasonable *minor*, would feel free to leave. *Yarborough v Alvarado*, 541 US 652, 667; 124 S Ct 2140; 158 L Ed 2d 938 (2004).

C. The Court of Appeals and the trial court correctly concluded Defendant was not "in custody" for *Miranda* purposes.

The trial court made numerous factual findings following the evidentiary hearing (R, 8–16), in which the court clearly found the officers' version of events credible. *See In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). *See also People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000) ("[I]f resolution of a disputed factual question turns on the credibility of witnesses or the weight of the evidence, we will defer to the trial court, which had a superior opportunity to evaluate these matters.") Based on those findings, the court correctly concluded that Defendant was not "in custody" for *Miranda* purposes, *Zahn*, 234 Mich App at 449, as discussed in greater detail below. The Court of Appeals correctly upheld both the trial court's findings and conclusions related to this issue. *Altantawi*, unpub op at 6–10.

As noted, a court conducting a *Miranda* custody analysis may consider several factors, and the first is the location of the questioning. *Howes*, 565 US at 508–509. "Interrogation in a suspect's home is usually viewed as noncustodial." *Coomer*, 245 Mich App at 220, quoting *People v Mayes (After Remand)*, 202 Mich App 181, 196; 508 NW2d 161 (1993) (CORRIGAN, P.J., concurring). A person's own home is hardly the type of "police-dominated, coercive atmosphere" envisioned by *Miranda*. *People v Ish*, 252 Mich App 115, 118; 652 NW2d 257 (2002). In this case, the officers arrived at the Altantawi home, were allowed inside by Bassel, and agreed to Bassel's request that they speak to Defendant there. (E-I, 300–303; E-II, 9, 17, 42, 47, 49, 65) Bassel and Defendant prayed while the officers waited in another room, and they then sat at a large table in the dining area, which was adjacent to a large, open space, with Defendant seated in the spot he normally occupied for meals. (E-I, 303–305, 309–310, 340–341; E-II, 43, 74–75, 78, 80) Thus, this factor weighs heavily in favor of the trial court's conclusion that Defendant was not in custody.

The second factor is the duration of the questioning. *Howes*, 565 US at 509. Generally, interviews lasting 90 minutes or less weigh against a finding of custody. *See, e.g.*, *Oregon v Mathiason*, 429 US 492; 97 S Ct 711; 50 L Ed 2d 714 (1977) (holding that a half-hour, voluntary interview was not a custodial interrogation); *Mendez*, 225 Mich App at 383 (same for 90-minute interview). *But see Yarborough*, 541 US at 665 (holding that a two-hour interview weighed in favor of a finding of custody). Defendant's interview lasted less than 40 minutes. (E-I, 312, 314–317, 322–323, 341, 350; E-II, 30) Sgt. Wehby began interviewing Defendant about 11 minutes into the audio recording and continued until Bassel returned and ended it 38 minutes later—hardly a grueling, marathon session.[7] [Appendix G.] Moreover, the interview was preceded by very little delay, and Defendant was not transported anywhere by either his father or the officers that caused

[7] Audio was also recorded both before and after the interview. [*See* Appendix G.]

a delay before the interview began. Thus, this factor also weighs heavily in favor of the conclusion that Defendant was not in custody.

The third factor is the statements made during the interview. *Howes*, 565 US at 509. The failure to tell an individual that they are free to leave may, in some circumstances, lead to a finding that they were in custody. *Yarborough*, 541 US at 665. Likewise, if an interview becomes increasingly accusatory in nature, it may weigh in favor of a finding of custody. *See Barritt*, 325 Mich App at 570–571, citing *Tankleff v Senkowski*, 135 F3d 235, 244 (CA 2, 1998). In this case, Defendant was not told that he was or was not under arrest or that he was free to leave the interview if he so chose. (E-I, 317, 339; E-II, 22–23, 30, 82, 130) However, he also was not told that he had to stay or answer any questions. (E-I, 317; E-II, 39, 82) Contrary to Defendant's assertions, the officers remained calm, non-accusatory, and non-confrontational throughout the interview, even when his story radically changed. (E-I, 319–320, 323) [Appendix G.] Ultimately, while Defendant was never told that he was or was not free to go, the officers never did or said anything to verbally restrain him by assuming an accusatory or confrontational tone. Thus, this factor is at worst neutral with regard to the trial court's conclusion that Defendant was not in custody.

The fourth factor is the presence or absence of physical restraints. *Howes*, 565 US at 509. A lack of physical restraints generally weighs against a finding of custody. *Yarborough*, 541 US at 664; *Mathiason*, 429 US at 495. Defendant was not handcuffed, bound, or restrained in any way. (E-I, 313, 318, 323; E-II, 82) Sgt. Wehby sat at the head of the table while the detectives sat to his right, across from Defendant; none of them was close enough to physically hinder his movement. (E-I, 309–310, 340–341; E-II, 43, 75, 78, 80) The area behind him was large and open. (E-II, 80) There were no other officers in the house or otherwise visible during the interview. (E-I, 311–312; E-II, 44–45, 80–81, 93, 108) At one point, Defendant left the table for a bottle of water, offered

one to Sgt. Wehby, and then returned without being asked or told to do so.[8] (E-II, 82–83, 129) Thus, this factor weighs heavily in favor of the trial court's conclusion that he was not in custody.

The fifth factor is whether the individual is released after questioning. *Howes*, 565 US at 509. When an individual is released after an interview, it weighs against a finding that they were in custody. *Mathiason*, 429 US at 495. In this case, after Defendant's interview ended, he got up, went into the family room, sat unrestrained on the sofa, and played on his phone. (E-I, 318, 327–331; E-II, 96–97) His arrest, which occurred later on, was a reasonable development given the new information the officers learned during the interview, rather than being pre-planned before the interview began. Because the interview occurred at the Altantawi family home (at Bassel's insistence), Defendant's initial "release" was more limited than when a person leaves a police station. However, the fact that he was allowed to move freely in a home that was, by various estimates, between 7,000 and 10,000 square feet *and* to continue using his phone shows that he retained a freedom of movement not associated with arrest. *Howes*, 565 US at 509. Ultimately, Defendant was released after the interview ended. *Mathiason*, 429 US at 495. Thus, this factor is at worst neutral or weighs slightly in favor of the conclusion that Defendant was not in custody.

Finally, a court may also consider a minor's age if it was known to the interviewer. *JDB*, 564 US at 277. Defendant contends that the trial court improperly considered his intelligence and education as part of the *Miranda* custody analysis, but this argument blatantly misconstrues what the court *actually* did. It is true the court noted that, at the time of the interview, Defendant was 16

[8] Additionally, contrary to Defendant's assertions now, he was never ordered to remain at the table when he offered to take the officers upstairs to give a demonstration of certain things he was describing. [Appendix D, at 28.] The officers simply responded that it was sufficient for him to continue verbally describing the scene. [*Id*.] It is also clear from this interaction that Defendant was not attempting to end the questioning by leaving the officers' presence; rather, ***he wanted to continue the interaction***, in another location, by not just telling the officers *what* had allegedly happened but to also show them *how* it had happened.

years old and attended the International Academy. (R, 16–18; *see also* E-I, 317, 339) However, the court **only** did so as part of its conclusion that his age was not a determinative or significant factor, **not** as part of the custody analysis itself. *JDB*, 564 US at 277. Specifically, the court explained that Defendant's age was not a significant or determinative factor both because he attended "a school for extremely bright students" and because it was apparent from the audio recording that he is "a bright young man" who "did understand what was going on."[9] (R, 16–17) The court especially took note of Defendant's statements, because it was apparent he "understood how much information to give," only elaborated if questioned further, and declined to expand on specific topics he did not want to discuss further.[10] (R, 17) Thus, the conclusion that Defendant's age was not a significant factor in the custody analysis was sound. *JDB*, 564 US at 277.

Ultimately, the trial court correctly concluded that, under the totality of the circumstances, Defendant was not in custody during his interview. *Howes*, 565 US at 508–509; *Zahn*, 234 Mich App at 449. He was neither arrested nor restrained in his movements to the degree associated with a formal arrest. *Peerenboom*, 224 Mich App at 197. An objective review of the circumstances, assiduously undertaken by the trial court, shows that the interview environment did not present "the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*," *Howes*, 565 US at 509, and a reasonable person would have felt free to leave. *Yarborough*, 541 US at 667. Accordingly, the court did not err when it concluded Defendant was not in custody, and the Court of Appeals did not clearly err in affirming the trial court.

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[9] It must be noted (as the trial court did) that near the beginning of the audio recording Bassel can be heard asking Defendant if it is okay for the officers to speak to him. While Defendant's answer is garbled, his actions thereafter—*i.e.*, ***both sitting at the table and answering questions after his father leaves, without any protest***—clearly suggests his answer to the question his father asked him was 'yes.' [Appendix G, at 7:40–7:42.]

[10] The record supports the court's findings. (E-II, 24–25, 37–38, 87, 123, 130) [*See also* Appendices D and G.] Thus, there was no clear error. *Shipley*, 256 Mich App at 373.

D. Defendant's arguments in his application regarding the custody issue lack merit.

In his application, Defendant offers several arguments that he claims support his assertion that he was in custody during the interview. He is incorrect. First, and curiously, Defendant repeatedly refers to his statements to the detectives as a confession, and he also makes various references to false confessions and the dangers thereof. A "confession," however, is "[a] criminal suspect's oral or written acknowledgement of guilt, often including details about the crime." Black's Law Dictionary (9th ed), p 338. *However, at no point during his voluntary 38-minute in-home interview did Defendant ever acknowledge guilt or give any details of criminal activity.* In fact, the record shows quite to the contrary: although Defendant did change his story bit by bit as the detectives revealed of what they knew, *he steadfastly maintained that his mother's death was simply a tragic accident*. While his statements may ultimately be contradicted by other evidence, such contradiction does not transform his interview statements into a confession, let alone a false confession that was coerced by the police. *Howes*, 565 US at 509.

Second, Defendant references the supposed police domination of the Altantawi family home. He alleges both that the police forbade him and his father from going to their designated prayer area, that they took total control of the home, and that they roamed around and conducted a search, thus showing the custodial nature of the entire interaction. However, Defendant did not testify, and the only testimony that supports the allegations came from Bassel, whom the trial court found was not a credible witness.[11] *See Sexton*, 461 Mich at 752; *Miller*, 433 Mich at 337. The evidence that the court found credible, however, showed that *only* Sgt. Wehby and the two

[11] In its ruling, the court found that Bassel's testimony "**was not credible**" and that at least one part of it was "**totally fabricated**." (R, 13–15 (emphasis added)) The credibility findings were largely based on substantial discrepancies between Bassel's testimony and the audio recordings. [*See* Appendices F and G.]

detectives were present in the home[12] during the interview and that Defendant's father allowed them to be there. (E-I, 301; E-II, 44, 65, 80–81, 93) Likewise, there is no credible evidence that Defendant was "ordered" to go downstairs, as he now alleges. (E-I, 346–347; E-II, 67–72, 121) Finally, Defendant also claims that the "psychological pressures" exerted by the alleged police domination of the Altantawi family home would have left "any reasonable minor" to feel that he or she could not leave or terminate the interview. However, as noted previously, the United States Supreme Court has specifically disavowed a "reasonable minor" standard for evaluating whether a juvenile was in custody for *Miranda* purposes. *Yarborough*, 541 US at 667.

Third, Defendant also makes several references to the absence of his father, Bassel, and implies that the police improperly isolated him from Bassel. However, he wholly ignores that it was **Bassel's** decision to leave during the interview *despite* Sgt. Wehby's offer to have someone go to the bus stop to retrieve Defendant's sister, Aya, so that Bassel could stay with Defendant. (E-I, 305–306, 334; E-II, 18, 73–74, 134) Moreover, the transcript and recording clearly show that, before Bassel left, neither he nor Defendant expressed *any* issue with Defendant talking to the detectives in Bassel's absence. (E-I, 306–308, 351; E-II, 73, 76) [Appendices D and G.]

Fourth, Defendant alleges that the detectives lied to him, such as by telling him that from their review of the video they "knew" he was in the bedroom with his mother before she went out the window. This assertion misconstrues the detectives' statements, both by failing to take into account *what* they said and *when* they said it. The detectives did say more than once that they knew "***somebody***" else was in the bedroom with Nada and that they were almost certain it was a male. [Appendix D, at 18, 20 (emphasis added).] However, the detectives never said they knew it was

[12] It is also notable that this was the ***third*** time in 2 days that the police had visited the Altantawi family home. A reasonable person, based on such recent prior experience, could certainly surmise that the officers would once again simply ask questions and leave.

Defendant *until after Defendant himself had already acknowledged that he had been in the bedroom with his mother at the time she went out the window*. [*Id*. at 24–26.] The statement that the detectives knew Defendant was in the room was merely them repeating what he had said.

Finally, Defendant's assertion that he invoked his right to remain silent misconstrues what was actually said during the interview. An assertion of the right to remain silent must be unambiguous and unequivocal. *See Berghuis v Thompkins*, 560 US 370, 381–382; 130 S Ct 2250; 176 L Ed 2d 1098 (2010). Courts have long recognized that neither an individual's responses during questioning that show a desire to avoid broaching particular subject matter, *People v Jackson*, 158 Mich App 544, 551; 405 NW2d 192 (1987), nor an "assertion that suggests [the individual] wants to limit his answers," constitute an invocation of the right to remain silent. *People v Spencer*, 154 Mich App 6, 13; 397 NW2d 525 (1986).

In this case, Defendant's reluctance to broach certain subjects or limit his answers were not assertions that he no longer wanted to speak to the detectives at all. *Jackson*, 158 Mich App at 551; *Spencer*, 154 Mich App at 13. For example, at one point Defendant stated "[t]hat's all I have to say," but it is clear from the context of the conversation that he only did not want to say anything further *about his sister*, whose actions on the morning of their mother's death were being discussed at the time. [Appendix D, at 18–19.] Later, **after** Defendant had already described how his mother had supposedly slipped and fallen out of the window in front of him, he then said, "She slipped over. I could've helped her but . . . I'm not . . . I don't want to say anything." [*Id*. at 26.] One of the detectives then asked, "You don't wanna [sic] say what?" [*Id*.] Defendant replied "[M]ore about it." [*Id*.] Far from being an unequivocal and unambiguous invocation of the right to remain silent, Defendant was clearly attempting to simply avoid particular topics and limit his answers. *Jackson*, 158 Mich App at 551; *Spencer*, 154 Mich App at 13. Thus, Defendant's strategic attempts

to conform his statements to the facts presented to him, to avoid certain subject matter, or to otherwise limit his answers were, as the trial court recognized, a clear demonstration that "the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*" simply were not present here. *Howes*, 565 US at 509.

E. Conclusion.

Ultimately, the trial court made numerous factual findings and credibility determinations as part of its ruling on the issue of whether Defendant was in custody for *Miranda* purposes during his interview. The Court of Appeals properly gave deference to those findings and determinations, and this Court should decline Defendant's invitation to engage in both new factfinding and credibility determinations. *Sexton*, 461 Mich at 752; *Miller*, 433 Mich at 337; *People v Marbury*, 151 Mich App 159, 161; 390 NW2d 659 (1986) (noting that an appellate court should give great deference to a trial court's assessment of the credibility of the witnesses in a *Walker* hearing). Furthermore, as the Court of Appeals concluded, the trial court properly objectively evaluated the totality of the circumstances when it concluded, based on its prior factual findings, that Defendant was not in custody during his interview at the Altantawi family home. *Howes*, 565 US at 508–509. The trial court did not err by denying the motion to suppress as to this issue, and the Court of Appeals did not clearly err by affirming that ruling. *Williams*, 472 Mich at 313. This Court should deny Defendant's interlocutory application as to this issue.

II. **The Court of Appeals and the trial court did not clearly err when they concluded that Bassel Altantawi had the authority, as the homeowner and only adult present, to consent to a search of the Altantawi family home and its contents and that he voluntarily consented to the search for and removal of the home security system's DVR recording device.**

Standard of Review & Issue Preservation:

A court's factual findings in ruling on a motion to suppress are reviewed for clear error. *Williams*, 472 Mich at 313; MCR 2.613(C). In particular, "[t]he trial court's decision regarding the validity of the consent to search is reviewed by this Court under a standard of clear error." *People v Mahdi*, 317 Mich App 446, 460; 894 NW2d 732 (2016). "A finding is clearly erroneous if it leaves this Court with a definite and firm conviction that a mistake was made." *Shipley*, 256 Mich App at 373. The trial court's application of constitutional standards regarding searches and seizures, and its ultimate ruling on a motion to suppress, are reviewed de novo. *Williams*, 472 Mich at 313.

This issue was preserved for appellate review by Defendant's motion to suppress.

Discussion:

This Court should deny Defendant's interlocutory application for leave to appeal as to this issue because the Court of Appeals correctly affirmed the trial court's order denying the motion to suppress. In this issue, Defendant contends that the consent given by his father, Bassel Altantawi, to the detectives to take and search the security system DVR from the Altantawi family home was invalid. However, he abandons his prior primary argument that was presented to the Court of Appeals, *i.e.*, that Bassel's consent was coerced. Instead, he focuses on a secondary issue that was also presented to the Court of Appeals: specifically, whether Bassel *could give* consent in the first place. However, his argument lacks merit because Bassel, as the owner of the Altantawi family home and its contents, had absolute authority to consent to the detectives taking and reviewing the DVR. Although Defendant briefly notes that consent may come from the person whose property

is being searched, he then spends the remainder of his argument analyzing this case as though Bassel was a third party who possessed no actual or apparent authority over his own property. The trial court correctly found that Bassel, as the sole owner of the property and only adult present, had authority to consent and that he voluntarily did so, and the Court of Appeals correctly affirmed those findings. Accordingly, this Court should deny Defendant's application as to this issue.

A. The law of consent searches.

"One established exception to the general warrant and probable cause requirements is a search conducted pursuant to consent." *People v Borchard-Ruhland*, 460 Mich 278, 293–294; 597 NW2d 1 (1999), citing *Schneckloth v Bustamonte*, 412 US 218, 219; 93 S Ct 2041; 36 L Ed 2d 854 (1973). The issue of consent "generally presents a question of fact and normally involves credibility determinations." *People v Chowdhury*, 285 Mich App 509, 525; 775 NW2d 845 (2009). A trial court's "resolution of a factual issue is entitled to deference. This is particularly true where a factual issue involves the credibility of witnesses whose testimony is in conflict." *People v Geno*, 261 Mich App 624, 629; 683 NW2d 687 (2004). *See also People v Frohriep*, 247 Mich App 692, 702; 637 NW2d 562 (2001) ("We overstep our review function if we substitute our judgment for that of the trial court and make independent findings."). In Michigan, the People must show by clear and convincing evidence that consent was properly given. *E.g.*, *People v Raybon*, 125 Mich App 295, 303; 336 NW2d 782 (1983).

Consent for a warrantless search must be given either by the individual whose property is searched or by a third party who has common authority over the premises. *Illinois v Rodriguez*, 497 US 177, 181; 110 S Ct 2793; 111 L Ed 2d 148 (1990); *People v Mead*, 503 Mich 205, 217; 931 NW2d 557 (2019); *People v Brown*, 279 Mich App 116, 131; 755 NW2d 664 (2008). Consent must be voluntary and cannot stem from duress or coercion, *Chowdhury*, 285 Mich App at 524,

and it must be "unequivocal, specific, and freely and intelligently given." *People v Galloway*, 259 Mich App 634, 648; 675 NW2d 883 (2003). Consent may be given verbally or "may be fairly inferred from context." *Birchfield v North Dakota*, 579 US ___; 136 S Ct 2160, 2185; 195 L Ed 2d 560 (2016). *See also Lavigne v Forshee*, 307 Mich App 530, 540; 861 NW2d 635 (2014), quoting *United States v Carter*, 378 F3d 584, 587 (CA 6, 2004) (recognizing that voluntary consent may be given by "'words, gesture, or conduct.'").

B. Bassel Altantawi could consent to the removal of the DVR and the review of the video on it because he was the owner of the home and its contents.

In his application, Defendant contends that his father, Bassel Altantawi, lacked *any* authority to consent to the search for and seizure of the home security system DVR from the Altantawi family home. In doing so, he invites this Court to abandon decades of precedent from the United States Supreme Court, from our Court of Appeals and from this Court itself, all of which have held that consent for a search or seizure of property must be given by "**either** *the property's owner* **or** a third party who shares common authority over the property." *Mead*, 503 Mich at 217 (emphasis added). *See also Rodriguez*, 497 US at 181 ("The prohibition [against warrantless entry of a home to arrest or to search] does not apply, however, to situations in which voluntary consent has been obtained, either *from the individual whose property is searched* . . . or from a third party who possesses common authority over the premises . . . .") (emphasis added, internal citations omitted); *Brown*, 279 Mich App at 131 (same).

In this case, by Bassel's own admission, he owned the Altantawi family home. (E-I, 251–252, 262; E-II, 251–252) Sgt. Wehby was aware that Bassel was the homeowner. (E-I, 180–181) While Bassel had co-owned the home with his estranged wife, Nada Huranieh, her death the day before the detectives came to the house to look for the DVR left Bassel as the sole owner of the home and its contents. *See Tkachik v Mandeville*, 487 Mich 38, 46–47; 790 NW2d 260 (2010)

(noting that in a tenancy by the entirety both spouses have a right of survivorship, "meaning that, in the event that one spouse dies, the remaining spouse automatically owns the entire property."); *Albro v Allen*, 434 Mich 271, 274–275; 454 NW2d 85 (1990) ("The principal characteristic of the joint tenancy is the right of survivorship. Upon the death of one joint tenant, the surviving tenant or tenants take the whole estate."). Thus, Bassel categorically had the authority to consent to a search for and of the DVR from his home's security system. *Mead*, 503 Mich at 217.

Defendant contends that due to a protective order stemming from a domestic violence case involving Bassel and Nada that prohibited Bassel from being in the home, Bassel lacked any authority to consent to a search. He specifically argues that Bassel lacked "common authority" over the premises and discusses, at length, the precept that "common authority" is not based on the law of property. However, Defendant's argument is based on the false premise that Bassel was merely a third party who did not possess common authority over the property, rather than what he actually was: the property's owner. The United States Supreme Court has made clear that a "common authority" inquiry, one detached from the law of property and property interests, is implicated *only* in those instances where a third party rather than the property's owner is involved. *E.g.*, *United States v Matlock*, 415 US 164, 171 n 7; 94 S Ct 988; 39 L Ed 2d 242 (1974) ("Common authority is, of course, not to be implied from the mere property interest a *third party* has in the property. The authority which justifies the *third-party consent* does not rest upon the law of property, with its attendant historical and legal refinements . . . .") (emphasis added). In this case, Bassel was *not* a third party; as the homeowner, he was *the* first (and only) party.[13] *E.g.*, *Fernandez*

[13] Defendant relies in substantial part on *United States v Andrus*, 483 F3d 711 (CA 10, 2007), and attempts to draw contrasts to this case, *e.g.*, while the individual who gave consent in *Andrus* was the defendant's father, they were not estranged, they lived together, and they had simultaneous mutual use of or control over the computer that was searched. However, Defendant ignores critical distinctions, such as the fact that the defendant in *Andrus* was a 51 year old man who only lived in

v California, 571 US 292, 298; 134 S Ct 1126; 188 L Ed 2d 25 (2014) (noting that it would be "unreasonable—indeed, absurd" to require the police to obtain a warrant when the sole owner of a home voluntarily consents to a search and that "[t]he owner of a home has a right to allow others to enter and examine the premises," such as the police "if that is the owner's choice."). In this case, there is no evidence whatsoever that Defendant or either of his sisters—all of whom were minors as of August 22, 2017—had any sort of ownership interest in the home, let alone any interest that would allow hypothetical, after-the-fact objections the siblings might have had to the police actions with respect to the DVR to override the consent of their father, the homeowner.

Finally, the People also note that Defendant repeatedly asserts that the police should have sought a search warrant for the DVR. However, a search warrant must be based on probable cause. *People v Russo*, 439 Mich 584, 606; 487 NW2d 698 (1992). "Probable cause to issue a search warrant exists where there is a substantial basis for inferring a fair probability that contraband or evidence of a crime will be found in a particular place." *People v Martin*, 271 Mich App 280, 298; 721 NW2d 815 (2006) (internal quotation marks and citation omitted). Given this standard, Defendant's contention that the police should have sought a warrant is especially curious. At the time Dets. Molloy and Hammond came to the home on August 22, 2017, to look for the DVR,

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the home to help care for his aging parents. *Andrus*, 483 F3d at 713, 720. Moreover, the computer that was searched in *Andrus* was located in the defendant's bedroom, not a common area. *Id*. at 720. Finally, the *Andrus* Court even distinguished the third-party situation before it—a question not previously addressed in the Tenth Circuit—with prior cases "when the defendant computer owner himself has consented to the search." *Id*. at 717, citing *United States v Brooks*, 427 F3d 1246, 1249–1253 (CA 10, 2005). Furthermore, Defendant's reliance on *Mahdi*, *supra*, is also misplaced. As Defendant's application notes, the cell phone whose data was searched apparently belonged to Mahdi. *Mahdi*, 317 Mich App at 452, 459–460 (noting that the phone was found next to a pile of men's clothing in Mahdi's mother's apartment and that Mahdi lived in the apartment with her). However, unlike this case, while Mahdi's mother consented to the search of her apartment for drugs, ***no one*** consented to the seizure and eventual search of the phone, *i.e.*, *neither* the property's owner *nor* a third party with the requisite authority consented. *Id*. at 460–462.

they did not know if Nada's death was an accident, a suicide, or a homicide. There was simply no basis at the time to support the issuance of a search warrant; thus, the detectives sought voluntary cooperation in their investigation from the homeowner, because it was their only recourse.[14]

C. Conclusion.

Ultimately, Defendant presents no statutes or case law—just as he did not when this issue was presented to the Court of Appeals—that support the proposition that a no-contact order from a domestic violence case either diminishes or destroys an individual's ownership interest in a marital home or its contents *or* that such an order survives the protected person's death so as to deprive the individual who is subject to the order of his ownership of the home or its contents. Thus, the Court of Appeals correctly concluded that "[e]ven if [Bassel] was prohibited from entering the property, he still had a legal ownership interest in the property because he and [Nada] had not yet finalized their divorce. Therefore, [Bassel] possessed the ability to give the police consent to search the house and take the DVR." *Altantawi*, unpub op at 4. This Court should decline his invitation to hold, contrary to decades of precedent, that the owner of property may not consent to a search or seizure of that property. *E.g.*, *Mead*, 503 Mich at 217. Accordingly, this Court should deny Defendant's interlocutory application as to this issue as well.

[14] If the police had sought and somehow obtained a warrant, then Defendant would have argued that there was no probable cause to support a warrant.

RELIEF

WHEREFORE, Jessica R. Cooper, Prosecuting Attorney in and for the County of Oakland, by Joshua J. Miller, Assistant Prosecuting Attorney, respectfully requests that this Honorable Court deny the interlocutory application for leave to appeal and allow this case to proceed to trial.

Respectfully submitted,

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